

MISCELLANEOUS. No. 36 (1916).

FURTHER CORRESPONDENCE

WITH THE

UNITED STATES AMBASSADOR

RESPECTING THE

“TRADING WITH THE ENEMY (EXTENSION OF POWERS) ACT, 1915.”

[In continuation of “Miscellaneous, No. 11 (1916)” : Cd. 8225.]

*Presented to both Houses of Parliament by Command of His Majesty.
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Further Correspondence with the United States Ambassador
respecting the "Trading with the Enemy (Extension of
Powers) Act, 1915."

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No. 1.

Mr. Page, United States Ambassador at London, to Viscount Grey.

My Lord,

American Embassy, London, July 28, 1916.

PURSUANT to instructions from my Government, I have the honour to transmit to your Lordship the following communication which I have just received by telegraph:—

"The announcement that His Britannic Majesty's Government has placed the names of certain persons, firms, and corporations in the United States upon a proscriptive black list, and has forbidden all financial or commercial dealings between them and citizens of Great Britain, has been received with the most painful surprise by the people and the Government of the United States, and seems to the Government of the United States to embody a policy of arbitrary interference with neutral trade, against which it is its duty to protest in the most decided terms.

"The scope and effect of the policy are extraordinary. British steamship companies will not accept cargoes from the proscribed firms or persons or transport their goods to any port; and steamship lines, if it is true, of neutral ownership understand that if they accept freight from them they are likely to be denied coal at British ports and excluded from other privileges which they have usually enjoyed, and may themselves be put upon the black list. Neutral bankers refuse loans to those on the list, and neutral merchants decline to contract for their goods, fearing a like proscription. It appears that British officials regard the prohibitions of the black list as applicable to domestic commercial transactions in foreign countries, as well as in Great Britain and her dependencies, for Americans doing business in foreign countries have been put on notice that their dealings with black-listed firms are to be regarded as subject to veto by the British Government. By the same principle Americans in the United States might be made subject to similar punitive action if they were found dealing with any of their own countrymen whose names had thus been listed.

"The harsh, even disastrous, effects of this policy upon the trade of the United States and upon the neutral rights upon which it will not fail to insist are obvious. Upon the list of those proscribed and in effect shut out from the general commerce of the world may be found American concerns which are engaged in large commercial operations as importers of foreign products and materials and as distributors of American products and manufactures to foreign countries, and which constitute important channels through which American trade reaches the outside world. Their foreign affiliations may have been fostered for many years, and when once broken cannot easily or promptly be re-established. Other concerns may be put upon the list at any time and without notice. It is understood that additions to the proscription may be made 'whenever on account of enemy nationality or enemy association of such persons or bodies of persons, it appears to His Majesty expedient to do so' the possibilities of undeserved injury to American citizens from such measures arbitrarily taken and of serious and incalculable interruptions of American trade are without limit.

"It has been stated on behalf of His Majesty's Government that these measures were aimed only at the enemies of Great Britain, and would be adopted and enforced with strict regard to the rights of neutrals, and with the least possible detriment to neutral trade, but it is evident that they are inevitably and essentially inconsistent with the rights of the citizens of all nations not involved in war. The Government of

the United States begs to remind the Government of His Britannic Majesty that citizens of the United States are entirely within their rights in attempting to trade with the people or the Governments of any of the nations now at war, subject only to well-defined international practices and understandings, which the Government of the United States deems the Government of Great Britain to have too lightly and too frequently disregarded. There are well-known remedies and penalties for breaches of blockade, where the blockade is real and in fact effective, for trade in contraband for every unneutral act by whomsoever attempted. The Government of the United States cannot consent to see these remedies and penalties altered or extended at the will of a Power or group of Powers to the injury of its own citizens, or in derogation of its own rights. Conspicuous among the principles which the civilised nations of the world have accepted for the safeguarding of the rights of neutrals is the just and honourable principle that neutrals may not be condemned nor their goods confiscated, except upon fair adjudication and after an opportunity to be heard in Prize Courts or elsewhere. Such safeguards the black list brushes aside. It condemns without hearing, without notice, and in advance. It is manifestly out of the question that the Government of the United States should acquiesce in such methods or applications of punishment to its citizens. Whatever may be said with regard to the legality in the view of international obligation of the Act of Parliament upon which the practice of the black list, as now employed by His Majesty's Government, is understood to be based, the Government of the United States is constrained to regard that practice as inconsistent with that true justice, sincere amity, impartial fairness which should characterise the dealings of friendly Governments with one another. The spirit of reciprocal trade between the United States and Great Britain, the privilege long accorded to the nationals of each to come and go with their ships and cargoes, to use each other's shipping, and be served each by the other's merchants, is very seriously impaired by arbitrary and sweeping practices such as this. There is no purpose or inclination on the part of the Government of the United States to shield American citizens or business houses in any way from the legitimate consequences of unneutral acts or practices; it is quite willing that they should suffer the appropriate penalties which international law and the usage of nations have sanctioned, but His Britannic Majesty's Government cannot expect the Government of the United States to consent to see its citizens put upon an *ex parte* black list without calling the attention of His Majesty's Government in the gravest terms to the many serious consequences to neutral right and neutral relations, which such an act must necessarily involve. It hopes and believes that His Majesty's Government, in its natural absorption in a single pressing object of policy, has acted without a full realisation of the many undesired and undesirable results that might ensue."

I have, &c.

WALTER HINES PAGE.

No. 2.

Viscount Grey to Mr. Page.

Your Excellency,

Foreign Office, October 10, 1916.

HIS Majesty's Government have had under consideration the note which your Excellency was good enough to communicate to me on the 28th July last with respect to the addition of certain firms in the United States of America to the statutory List compiled and issued in accordance with the "Trading with the Enemy (Extension of Powers) Act, 1915."

2. You will recall that shortly after this Act became law, I had the honour, in my note of the 16th February last in reply to your note of the 26th January, to explain the object of the Act.* It is a piece of purely municipal legislation, and provides that His Majesty may by proclamation prohibit persons in the United Kingdom from trading with any persons in foreign countries who might be specified in such proclamations or in any subsequent orders. It also imposes appropriate penalties upon persons in the United Kingdom who violate the provisions of this Statute.

3. That is all. His Majesty's Government neither purport nor claim to impose any disabilities or penalties upon neutral individuals or upon neutral commerce. The measure is simply one which enjoins those who owe allegiance to Great Britain to cease having trade relations with persons who are found to be assisting or rendering service to the enemy.

* See "Miscellaneous, No. 11 (1916)."

4. I can scarcely believe that the United States Government intend to challenge the right of Great Britain as a sovereign State to pass legislation prohibiting all those who owe her allegiance from trading with any specified persons when such prohibition is found necessary in the public interest. The right to do so is so obvious that I feel sure that the protest which your Excellency handed to me has been founded on a misconception of the scope and intent of the measures which have been taken.

5. This view is strengthened by some of the remarks which are made in the note. It is, for instance, stated that these measures are "inevitably and essentially inconsistent with the rights of the citizens of all nations not involved in war." The note then proceeds to point out that citizens of the United States are entirely within their rights in attempting to trade with any of the nations now at war. His Majesty's Government readily admit that the citizens of every neutral nation are free to trade with belligerent countries. The United States Government will no doubt equally readily admit that they do so subject to the right of the other belligerent to put an end to that trade by every means within his power which is recognised by international law, by such measures, for instance, as the seizure of neutral goods as contraband, or for breach of blockade, &c. The legislation, however, to which exception is taken does not belong to that class of measures. It is purely municipal. It is an exercise of the sovereign right of an independent State over its own citizens, and nothing more. This fact has not, I feel sure, been fully realised by the Government of the United States of America, for the note maintains that the Government cannot consent to see these remedies and penalties altered and extended at will in derogation of the right of its citizens; and says that "conspicuous among the principles which the civilised nations of the world have accepted for the safeguarding of the rights of neutrals is the just and honourable principle that neutrals may not be condemned nor their goods confiscated, except upon fair adjudication and after an opportunity to be heard in Prize Courts or elsewhere."

6. As I have said above, the legislation merely prohibits persons in the United Kingdom from trading with certain specified individuals, who, by reason of their nationality or their association, are found to support the cause of the enemy, and trading with whom will therefore strengthen that cause. So far as that legislation is concerned, no rights or property of these specified individuals are interfered with; neither they nor their property are condemned or confiscated; they are as free as they were before to carry on their business. The only disability they suffer is that British subjects are prohibited from giving to them the support and assistance of British credit and British property.

7. The steps which His Majesty's Government are taking under the above-mentioned Act are not confined to the United States of America; the policy is being pursued in all neutral countries. Nay, more. With the full consent of the Allied Governments, firms, even in Allied countries, are being placed on the Statutory List if they are firms with whom it is necessary to prevent British subjects from trading. These considerations may, perhaps, serve to convince the Government of the United States that the measures now being taken are not directed against neutral trade in general. Still less are they directed against American trade in particular; they are part of the general belligerent operations designed to weaken the enemy's resources.

8. I do not read your note of the 28th July as maintaining that His Majesty's Government are obliged by any rule of international law to give to those who are actively assisting the cause of their enemies, whether they be established in neutral or in enemy territory, the facilities which flow from participation in British commerce. Any such proposition would be so manifestly untenable that there is no reason to refute it. The feelings which I venture to think have prompted the note under reply must have been that the measures which we have been obliged to take will be expanded to an extent which will result in their interfering with genuine neutral commerce; perhaps, also, that they are not exclusively designed for belligerent purposes, but are rather an attempt to forward our own trade interests at the expense of neutral commerce, under the cloak of belligerency; and, lastly, that they are, from a military point of view, unnecessary.

9. Upon these points I am able to give to the Government and people of the United States the fullest assurances. Upon the first point it is true, as your note says, that the name of a firm may be added to the statutory list of persons with whom British persons may not trade whenever, on account of the enemy association of such firm, it seems expedient to do so. But the Government of the United States can feel confident that this system of prohibitions will not be carried further than is absolutely necessary.

It has been forced upon us by the circumstances of the present war. To extend it beyond what is required in order to secure its immediate purpose—the weakening of the resources of our opponents—or to allow it to interfere with what is really the genuine neutral trade of a country with which we desire to have the closest commercial intercourse, would be contrary to British interests. The advantage derived from a commercial transaction between a British subject and a foreigner is mutual, and for His Majesty's Government to forbid a British subject to trade with the citizen of any foreign country necessarily entails some diminution of commercial opportunity for that British subject, and therefore some loss both to him and to his country. Consequently the United States Government, even if they are willing to ignore the whole tradition and tendency of British policy towards the commerce of other nations, might be confident that self-interest alone would render His Majesty's Government anxious not to place upon the statutory list the name of any firm which carries on a genuine *bonâ fide* neutral trade. If they did so, Great Britain herself would be the loser.

10. As to the second point, there seem to be individuals in the United States and elsewhere whom it is almost impossible to convince that the measures we take are measures against our enemies, and not intended merely to foster our own trade at the expense of that of neutral countries. I can only reiterate, what has been repeatedly explained before, that His Majesty's Government have no such unworthy object in view. We have, in fact, in all the steps we have taken to prevent British subjects from trading with these specified firms, been most careful to cause the least possible dislocation of neutral trade, as much in our interests as in those of the neutral.

11. I turn now to the question whether the circumstances of the present war are such as to justify resort on the part of His Majesty's Government to this novel expedient.

12. As the United States Government are well aware, the Anglo-American practice has in times past been to treat domicile as the test of enemy character, in contradistinction to the continental practice, which has always regarded nationality as the test. The Anglo-American rule crystallised at the time when means of transport and communication were less developed than now, and when in consequence the actions of a person established in a distant country could have but little influence upon a struggle.

13. To-day the position is very different. The activities of enemy subjects are ubiquitous, and under modern conditions it is easy for them, wherever resident, to remit money to any place where it may be required for the use of their own Government, or to act in other ways calculated to assist its purposes and to damage the interests of the Powers with whom it is at war. No elaborate exposition of the situation is required to show that full use has been and is being made of these opportunities.

14. The experience of the war has proved abundantly, as the United States Government will readily admit, that many Germans in neutral countries have done all in their power to help the cause of their own country and to injure that of the Allies; in fact, it would be no exaggeration to say that German houses abroad have in a large number of cases been used as an integral part of an organisation deliberately conceived and planned as an engine for the furtherance of German political and military ambitions. It is common knowledge that German business establishments in foreign countries have been not merely centres of German trade, but active agents for the dissemination of German political and social influence, and for the purpose of espionage. In some cases they have even been used as bases of supply for German cruisers, and in other cases as organisers and paymasters of miscreants employed to destroy by foul means factories engaged in making, or ships engaged in carrying, supplies required by the Allies. Such operations have been carried out in the territory even of the United States itself, and I am bound to observe, what I do not think will be denied, that no adequate action has yet been taken by the Government of the United States to suppress breaches of neutrality of this particularly criminal kind, which I know that they are the first to discountenance and deplore.

15. In the face of enemy activities of this nature, it was essential for His Majesty's Government to take steps that should at least deprive interests so strongly hostile of the facilities and advantages of unrestricted trading with British subjects. The public opinion of this country would not have tolerated the prolongation of the war by the continued liberty of British subjects to trade with and so to enrich the firms in foreign countries whose wealth and influence were alike at the service of the enemy.

16. Let me repeat that His Majesty's Government make no such claim to dictate to citizens of the United States, nor to those of any other neutral country, as to the persons with whom they are or are not to trade. They do, however, maintain the

right, which in the present crisis is also their duty towards the people of this country and to their Allies, to withhold British facilities from those who conduct their trade for the benefit of our enemies. If the value to these firms of British facilities is such as to lead them to prefer to give up their trade with our enemies rather than to run the risk of being deprived of such facilities, His Majesty's Government cannot admit that their acceptance of guarantees to that effect is either arbitrary or incompatible with international law or comity.

17. There is another matter with which I should like to deal.

18. The idea would seem to be prevalent in some quarters that the military position is now such that it is unnecessary for His Majesty's Government to take any steps which might prejudice, even to a slight extent, the commerce of neutral countries, that the end of the war is in sight, and that nothing which happens in distant neutral countries can affect the ultimate result.

19. If that were really the position it is possible that the measures taken by His Majesty's Government might be described as uncalled for, but it is not. We may well wish that it were so. Even though the military situation of the Allies has greatly improved there is still a long and bitter struggle in front of them, and one which in justice to the principles for which they are fighting imposes upon them the duty of employing every opportunity and every measure which they can legitimately use to overcome their opponents.

20. One observation which is very commonly heard is that certain belligerent acts, even though lawful, are too petty to have any influence upon a struggle of such magnitude. It is, I know, difficult for those who have no immediate contact with war to realise with what painful anxiety men and women in this country must regard even the smallest acts which tend to increase, if only by a hair's breadth, the danger in which their relatives and friends daily stand, or to prolong, if only by a minute, the period during which they are to be exposed to such perils.

21. Whatever inconvenience may be caused to neutral nations by the exercise of belligerent rights, it is not to be compared for an instant to the suffering and loss occasioned to mankind by the prolongation of the war even for a week.

22. One other matter should be mentioned, namely, the exclusion from ships using British coal of goods belonging to firms on the statutory list. This is enforced by rendering it a condition of the supply of bunker coal. What legal objection can be taken to this course? It is British coal: why should it be used to transport the goods of those who are actively assisting our enemies? Nor is this the only point. It must be remembered that the German Government by their submarine warfare have sought to diminish the world's tonnage; they have sunk illegally and without warning hundreds of peaceful merchant ships belonging not only to Allied countries but to neutrals as well. Norwegian, Danish, Swedish, Dutch, Spanish, Greek ships have all been sunk. Between the 1st June and the 30th September, 1916, 262 vessels have been sunk by enemy submarines; 73 of these were British, 123 allied, and 66 neutrals. These totals included 10 British vessels which were sunk without warning and involved the loss of 81 lives, 2 allied, 1 of which involved the loss of 2 lives, no information being available as to the other, and 3 neutral involving the loss of 1 life. Even so the list is incomplete. Probably other vessels were sunk without warning and more lives than those enumerated were lost. It may be added that where those on board did escape it was as a rule only by taking to open boats.

23. One of the first enterprises to feel the loss of tonnage has been the Commission for Relief in Belgium. Relief ships have themselves been repeatedly sunk; and in spite of all the efforts of His Majesty's Government, in spite of the special facilities given for the supply of coal to ships engaged in the Commission's service, that body is constantly unable to import into Belgium the foodstuffs absolutely necessary to preserve the life of the population. Can it then be wondered that the British Government are anxious to limit the supply of British coal in such a way as to reserve it as far as possible to ships genuinely employed in Allied or neutral trade?

24. There is, indeed, one preoccupation in regard to this use of coaling advantages by His Majesty's Government which is no doubt present in the minds of neutrals, and which I recognise. I refer to the apprehension that the potential control over means of transportation thus possessed by one nation might be used for the disruption of the trade of the world in the selfish interests of that nation. His Majesty's Government therefore take this opportunity to declare that they are not unmindful of the obligations of those who possess sea-power, nor of that traditional policy pursued by the British Empire by which such power has been regarded as a trust and has been exercised in the interests of freedom. They require no representations to recall such considerations

to mind, but they cannot admit that, in the circumstances of the times, their present use of their coal resources, a use which only differs in extent from that exercised by the United States in the Civil War in the case of vessels proceeding to such ports as Nassau, is obnoxious to their duties or their voluntary professions.

25. In conclusion, I cannot refrain from calling to mind the instructions issued by Lord Russell on the 5th July, 1862, to the merchants of Liverpool in regard to trade with the Bahamas. His Lordship there advised British subjects that their "true remedy" would be to "refrain from this species of trade" on the ground that "it exposes innocent commerce to vexatious detention and search by American cruisers."

26. His Majesty's Government do not ask the Government of the United States to take any such action as this, but they cannot believe that the United States Government will question their right to lay upon British merchants, in the interests of the safety of the British Empire, for which they are responsible, the same prohibitions as Lord Russell issued fifty years ago out of consideration for the interests and feelings of a foreign nation. Suspicions and insinuations which would construe so simple an action as an opening for secret and unavowed designs on neutral rights should have no place in the relations between two friendly countries.

27. I trust that the explanations contained in this note will destroy such suspicions, and correct the erroneous views which prevail in the United States on the subject.

I have, &c.

GREY OF FALLODON.

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FURTHER Correspondence with the United States
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